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**The Values-Driven Trade Policy
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The Values-Driven Trade Policy of the European Union*

Balázs Horváthy **

Abstract:

As the primary objectives of the European integration process in the 1950s aimed at deepening the economic cooperation between the Member States, the external dimension of the Community activities had predominantly of economic and trade-related nature. Accordingly, the objectives and principles of the Common Commercial Policy (CCP) were laid down in a homogeneous, consistent and relatively closed structure. This consistency was driven, above all, by the objective of the liberalization, which allowed the legal and policy framework of the CCP to develop in line with the Community's free trade commitments to the international economic order, especially to the GATT. However, the expansion of the external policy horizon of the European Communities and the introduction of new policy fields led to conflicts of objectives more frequently, causing tensions between the CCP and other external policy areas. In other terms, the separation of the external activities presented dilemmas above all in policy decisions when the policy areas concerned had overlapping or conflicting objectives. Consequently, e.g. the economic sanctions might have been practically difficult to impose, because the policy decision required not only the economic and trade concerns to be taken into account, but the foreign policy interests had to be reflected as well. In other words, the main question was whether the CCP could be determined in isolation of its own logic based on the concept of the gradual, progressive liberalization, or values and concerns of other external policy fields, being not necessarily of trade-related nature, could (or should) be respected in the same way.

Due to the Treaty of Lisbon the CCP has become an integral part of the European Union's external action, which also established a general framework for values and principles, requiring the Union to pursue these concepts in the whole range of the EU external relations. Therefore, the functioning of the CCP is based on a two-level structure of values and principles now, which encompasses not only the proper, trade-related concepts, such as progressive liberalization, but includes several non-trade concerns, like protection of human rights, or promotion of sustainable development as well. Even though the Treaty succeeded in merging the diverging areas of the EU external action, the apparently more coherent construction does not firmly answer the question how the values and principles might relate to the specific concerns and needs of the CCP, and what role these concepts are playing in the operation of the EU trade policy.

Keywords:

EU, Common Commercial Policy, liberalization, GATT, WTO

1. Introduction

The Common Commercial Policy (CCP) has become an integral part of the European Union's external action as a result of the Treaty of Lisbon,¹ which also established a general framework for values,

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¹ The paper does not address all achievements of the Lisbon Treaty regarding the CCP (extending the scope of the competence, reshaping the institutional and procedural framework etc.). For a comprehensive analysis, see Marc Bungenberg – Christoph Herrmann (eds.): Common Commercial Policy after Lisbon. European Yearbook of International Economic Law, Special issue (2013; Markus Krajewski: The Reform of the Common Commercial Policy. In Andrea Biondi – Piet Eeckhout – Stefanie Ripley (eds.): EU Law after Lisbon. Oxford University Press,

principles and objectives, requiring that the Union shall pursue these concepts in the whole range of the EU external relations. Therefore, the functioning of the CCP is based on a two-level structure of principles and objectives, which encompasses not only the proper, trade-related goals, such as progressive liberalization, but includes several non-trade concerns, like protection of human rights, or promotion of sustainable development as well. At first glance, these changes seem to be unimportant, knowing that the European Union² has been committed to implementing an inclusive, ‘values-driven’ trade policy for many decades.³ The reform is indeed significant, because the Treaty succeeded in merging the diverging areas of the EU external action first time, however, the apparently more coherent construction does not firmly answer the question how the values, the general objectives, the principles might relate to the specific concerns and needs of the CCP, and what role these concepts are playing in the operation of the trade policy. The paper aims at addressing these questions, starting with a brief overview of the position of the CCP in the structure of the EU external relations (2.), afterwards, it will focus on the conceptual background of values, principles, and objectives (3.) and the principles and objectives relating to the CCP (4.), and finally, the coherence and the potential conflicts are examined (5.).

2 The CCP and the development of the EU external relations

The primary objectives of the European integration process in the 1950s aimed at deepening the economic cooperation between the Member States, therefore, the external dimension of the

2012, pp. 292-311.; Angelos Dimopoulos: The common commercial policy after Lisbon: Establishing parallelism between internal and external economic relations? *Croatian Yearbook of European Law and Policy*, 2008/4. pp. 101-129.; Cremona, Marise: Balancing Union and Member State interests: Opinion 1/2008, Choice of Legal Base and the Common Commercial Policy under the Treaty of Lisbon, *European Law Review*, 35 (2010) 5 678-694.; Christian Tietje: Die Außenwirtschaftsverfassung der EU nach dem Vertrag von Lissabon. Beiträge zum transnationalen Wirtschaftsrecht. Universität Halle-Wittenberg, 2009.

² I will not deal with the explanations on the EU’s sensitivity to integrating non-trade issues in its trade policy agenda. It is remarkable however, that Europe has had always a stronger devotion to social issues, including e.g. the environmental concerns, in comparison to the United States. In this narrower, environmental context, Ludwig Krämer emphasised more literally, that the idea of Adam Smith in *Wealth of Nations* regarding the concept of the ‘invisible hand’ has never gained as great importance in Europe as it had in the USA. This means that Governments in Europe, comparing with US, are seen as charged not only to promote liberty, but also to reduce inequalities in society. Ludwig Krämer: *The Roots of Divergence: A European Perspective*, In *Green Giants? Environmental Policies of the United States and the European Union. American and Comparative Environmental Policy*. (Eds.: Vig and Faure), The MIT Press, 2004., 57.

³ The “values-driven trade policy” is recent issue in the international trade law circles, predominantly in the USA, however the discussion is focusing on the policy issue itself, and not at all on its axiological, sociological context. (The discussion was triggered in February 2014, when the U.S. Trade Representative, Michael Froman delivered a speech on the US post-crisis trade strategy, and brought non-trade issues, as ‘values’ into prominence. See “A Values-Driven Trade Policy”, Speech of U.S. Trade Representative Michael Froman February 18, 2014, <http://cdn.americanprogress.org/wp-content/uploads/2014/02/Center-for-American-Progress-Remarks-Ambassador-Froman-2-18-14.pdf>).

Community activities predominantly had of economic and trade-related nature.⁴ Accordingly, the objectives and principles of the CCP were laid down in a homogeneous, consistent and relatively closed structure. This consistency was driven, above all, by the objective of the liberalization, which allowed the legal and political framework of the CCP to develop in line with the Community's free trade commitments to the international economic law. However, the expansion of the external policy horizon of the European Communities and the introduction of new policy areas led to conflicts of objectives more frequently, causing tensions between the CCP and other external policy areas. In the early 1970s, after making the foreign policy cooperation an embryonic feature (e.g. the establishment of the European Political Cooperation), the Member States and the EC institutions progressively faced the dilemma of coherence, and raised the question, how the objectives of the separate policy fields were relating to each other. Moreover, the trade and economic-related external policies and the foreign policy areas were distinct from each other pursuant to the model of cooperation. While the economic-related external policies, as the CCP, operated within the Community method and fell under the exclusive competence,⁵ the Member States' foreign policy co-operation worked within the intergovernmental cooperation. The separation of the external activities presented dilemmas especially in policy decisions when the policy fields concerned had overlapping or conflicting objectives. Consequently, e.g. the economic sanctions might have been practically difficult to impose, because the policy decision required not only the economic and trade concerns to be taken into account, but the foreign policy interests had to be reflected as well. In other words, the main question was whether the CCP could be determined in isolation of its own logic based on the concept of the gradual, progressive liberalization and the principle of uniformity, or concerns of other external policy fields, being not necessarily of trade-related nature, could (or should) be respected in the same way.

The unification of the Community's external activities would have resolved obviously this main dilemma, however the Member States, for obvious reasons of sovereignty, have put off the fusion of the foreign policy cooperation and other external policy fields for a long time, and before the reform of the Lisbon Treaty, the amendments of the primary law aimed only symbolic steps forward. Even though the text of the Single European Act referred already to the European Political Cooperation,⁶ i.e. the treaty recognized the Member States' intergovernmental foreign policy cooperation as a functional institution and laid down the constitutional basis for that, the isolation of the external activities has not been dissolved. Afterwards, the Maastricht Treaty incorporated the Common Foreign and Security Policy into the European Union's new construction, but the distinction between the Community and the intergovernmental activities, in form of separate pillars, remained in the new structure. The operation of

⁴ In addition to the Common Commercial Policy, the development cooperation and the conclusion of association agreements played the major role in the early external relations of the European Economic Community; See Panos Koutrakos: *EU International Relations Law*. Oxford, Hart Publishing, 2006. p. 5.

⁵ See e.g. Case 8/73 *Hauptzollamt Bremerhaven v Massey-Ferguson*, para. 3., ECLI:EU:C:1973:90; Case 41-76 *Donckerwolcke v Procureur de la République*, para. 31. ECLI:EU:C:1976:182; Case 38/75 *Douaneagent der Nederlandse Spoorwegen v Inspecteur der Invoerrechten en Accijnzen*, ECLI:EU:C:1975:154; Opinion 1/75., ECLI:EU:C:1975:145.

⁶ See Single European Act (OJ L 169, 29. 6.1987), Title III. Treaty Provisions on European Co-Operation in the Sphere of Foreign Policy

the Community pillar, including the CCP was clearly detached from the pillar of the foreign and security policy, making difficult to implement of the idea of coherence.⁷ It is, however, hardly to deny, that the pillar system – especially in the post-Maastricht period – led to substantial changes in some overarching issues,⁸ but the objectives and principles of the diverging fields of the EU external relations were determined specifically. It was also remarkable that neither the European Court of Justice made strong efforts to dissolve the strict isolation of the external activities, conversely, the case law has evidently showed the tendency to strengthen the autonomy and separate character of the second pillar.⁹ The issue of coherence and unification of the external activities was set on top of the agenda of the European Convention, and following the failure of the European Constitution, the Treaty of Lisbon not only reshaped the fundamental character of the European Union and abolished the pillar structure,¹⁰ but put great emphasis on the coherence and consistency of the EU external action. This was the first resolute attempt to bring the whole Union's action on the international scene under one 'umbrella' of values, objectives and principles.¹¹ As a consequence, these constitutional and operational categories already has to be common in all fields of external relations, including not only the typical external policies, as the CCP, or the common foreign and security policy, but the external dimensions of EU policies (e.g. international environmental cooperation) are involved as well.

⁷ Article 11 TEU (as amended by Treaty of Amsterdam) also included a provision on principles and objectives, but this provision had been the introductory article of the provisions on the Common Foreign and Security Policy, which in its application had been limited to the second pillar. Panos Koutrakos: *EU International Relations Law*. Oxford, Hart Publishing, 2006. p. 387.; Jürgen Schwarze: *EU-Kommentar*, 2nd ed., Baden-Baden, Nomos, 2009, Article 11 (1).

⁸ E.g. implementation of UN embargos: the Treaty of Maastricht provided first time the legal basis to act in a uniform procedure in implementing the UN Security Council decisions, and other collective economic sanctions against third countries (Article 228A of TEC as amended by Treaty of Maastricht), see Vera Gowlland-Debbas (ed.): *National Implementation of United Nations Sanctions. A Comparative Study*. Brill Nijhoff, 2004, p. 198. Even the Maastricht Treaty left some place to the Member States to introduce unilateral economic sanctions, however, the leeway of the Member State's action was disputed, Koutrakos offers the example of debate over the Greek sanctions on the Former Yugoslavian Republic of Macedonia, see: Panos Koutrakos: *Trade, foreign policy and defence in EU constitutional law*. Oxford, Hart Publishing, 2001. pp. 81-82.

⁹ In the pre-Lisbon era, the footprint of this tendency is palpable in the Kadi-judgement (Joined cases C-402/05 P and C-415/05 P. *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission*, ECLI:EU:C:2008:461), in which the Court emphasized categorically the separation of supranational and intergovernmental competences. Cf. with Dominik Eisenhut: *Delimitation of EU-Competences under the First and Second Pillar: A View Between ECOWAS and the Treaty of Lisbon*. *German Law Journal*, Vol. 10 No. 05. 2009, p. 596.

¹⁰ The TEU joins together the numerous aspects of the EU's external relations (called Union's External Action in Title V TEU) that includes the policy areas covered by the TEU and TFEU, i.e. Common Foreign and Security Policy, Common Commercial Policy, economic, financial and technical co-operation, humanitarian aid, and the external aspects of its other policies. Even though the Treaty of Lisbon abolished the old three pillar structure, Article 24 highlights that "[t]he common foreign and security policy (CFSP) is subject to specific rules and procedures."

¹¹ See Article 2 TEU, Article 3 (5) TEU, and Article 21 TEU.

3 Conceptual background: values, principles, and objectives

In light of the current constitutional structure, the formulation and implementation of the CCP, as an integrated part of the Union's external action, are guided by three major categories: values, principles, and objectives. It is worth limiting and clarifying the three concepts at hand briefly.

a) The 'values' are appearing in Article 2 TEU¹², declaring that "[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities [...]." These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.¹³ In the proper sense of this formulation, the 'values' are expressing the consensual wish of the Member States to submit the whole construction and operation of the Union under these ultimate criteria, representing a community of values.¹⁴ In other terms, the 'values' can be regarded as fundamental orientations and expectations, which are common, as well as are of a significant nature in the European societies.

However, it is questionable, whether Article 2 TEU does have a sort of meta-legal nature, or it possesses normative quality.¹⁵ On the one hand, the positioning of the values in the whole structure of the founding treaties suggests, the respect and implementation of values are a *conditio sine qua non* of the EU membership in accordance with Article 49 TEU.¹⁶ On the other hand, several specific Treaty

¹² Previously, the TEU put emphasis to the 'common values' of the Union, as a specific objective of the Common Foreign and Security Policy ("The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be [...] to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter" Article 11 TEU as amended by the Treaty of Nice). The current text of Article 2 TEU was originally formulated by the European Convention (see Article I-2 of Treaty establishing a Constitution for Europe), which was incorporated into the Treaty of Lisbon later.

¹³ Article 2 TEU, second sentence.

¹⁴ The concept of 'Union of interest' is rather a political category, which is frequently praised in the literature regarding the European identity. However, the legal scholarship (predominantly the German literature) brings the category of Community of Values (*Wertegemeinschaft*) into the context of the constitutionalisation process of the European Union. See Thilo Rensmann: Grundwerte im Prozeß der europäischen Konstitutionalisierung. Anmerkungen zur Europäischen Union als Wertegemeinschaft aus juristischer Perspektive. In Dieter Blumenwitz et. al. (eds.): Die Europäische Union als Wertegemeinschaft. Berlin, Duncker & Humblot, 2005.. p. 49–71. ??? Hallstein Rechtsgemeinschaft..., Ipsen Zweckgemeinschaft...???

¹⁵ Moreover, it is worth paying attention to the background and the history of origin of the text of Article 2. In light of the explanatory note of the Praesidium of the European Convention, which formulated the original text in 2003, this provision contain only a hard core of values. On the one hand, these values are "[...] fundamental that they lie at the very heart of a peaceful society practising tolerance, justice and solidarity; on the other hand, they must have a clear non-controversial legal basis so that the Member States can discern the obligations resulting therefrom which are subject to sanction." CONV 528/03. Draft of Articles 1 to 16 of the Constitutional Treaty (6 February 2003), 11. <http://european-convention.europa.eu/pdf/reg/en/03/cv00/cv00528.en03.pdf>

¹⁶ Pursuant to Article 49 TEU, any European state which respects the values and is committed to promoting them may apply to become a member of the Union.

provisions are referring to the values, or incorporate it into principles, or Treaty objectives. Accordingly, the provisions of the Treaty oblige the Union, or the Union's institutions to 'promote', to 'uphold', to 'safeguard', to 'protect', to 'assert' the values,¹⁷ and addresses also the Member States, which are risking possible sanctions in case of serious and persistent breach the fundamental values of the European Union.¹⁸ Interestingly, the Treaty makes reference in context of the external relations to the same six 'values' as 'principles', and the promotion, upholding etc. of these values in international relations are set down as 'objective' as well.¹⁹ In view of the previous reasons, it seems to be plausible, that the listing of values in Article 2 TEU itself has not distinctive character, neither within general scope, nor in context with the external relations and CCP. However, the Treaty lays down legal obligations, when the 'values' are contextualized within more specific principles, the promotion of which is set as an objective of the European Union. In other words, the distinction between the abstract values and the more principles seems to be quite elusive, and from this perspective, the values, without denying its fundamental role in the structure of the founding Treaties, might have rather axiological, than legal nature.²⁰ Disregarding the axiological significance of the values, these all means that the same orientation can be formulated as value and as a principle, which is depending mainly on the wish of the legislator.²¹

b) Similarly to the values, the '*principles*' are expressing orientations and requirements; however the nature of principles are less abstract and more concrete, than the concept of values is. The principles have normative quality, and in addition to that, are helpful tools in interpretation and legal argumentation. It covers also the general principles developed by the Court of Justice of the European Union inspired by the general rules, objectives, principles laid down in the treaties; common constitutional traditions of the Member States, or international agreements concluded by all Member States. The 'interpretative activism' of the Court led to recognition of several general principles of EU law, which have been made explicit and incorporated into the founding Treaties as 'principle,' or as

¹⁷ See Article 3 (1), Article 3 (5), Article 13 (1), Article 8, Article 21 (2), and Article 42 TEU.

¹⁸ Article 7 TEU.

¹⁹ E.g., the values of Article 2 TEU are shown up in Article 21 TEU as 'principles.' The other striking example can be found in the preamble of the Charter of Fundamental Rights of the European Union that seems to be not fully compatible with the wording of Article 2 TEU. In the Charter's preamble, the human dignity, freedom, equality and solidarity are cited as 'universal values', however it refers to the "principles of democracy and the rule of law."

²⁰ Bogdandy presumes, that even Article 2 TEU refers to 'values', we have to regard these categories as normative provisions and the values as indicated in Article 2 are, in fact, identical to principles. Bogdandy does not deny the distinction between constitutional values and principles, however he does not overlook the dual character of values in Article 2, namely that the same values are present in other places in the Treaty and playing also normative roles (e.g. in Article 3 as objective). See Armin von Bogdandy: Grundprinzipien. In: A. v. Bogdandy and J. Bast: Europäisches Verfassungsrecht: Theoretische und dogmatische Grundzüge. Berlin, Springer-Lehrbuch, 2009. 13–71.; specifically at 28–29.

²¹ See below the objectives of the Articles 3 and 21 TEU. It is deemed in the literature, that that the reference to the 'values' is to be understood as something that cannot be reduced to the notion of legal principle, but it maintains an axiological nature, despite the fact that it is found in the text of the Treaty. See Hermann-Josef Blanke – Stelio Mangiameli (eds.): The Treaty on European Union (TEU). A Commentary. Springer, 2013. p. 116. note 26.

‘values’ itself.²² Even though the principles encompass more concrete content than the values, the level of abstraction of the principles is variable. Some principles cover larger EU activities (e.g. principles of EU external actions in Article 21 TEU), and other determine specific policy fields (e.g. principles of CCP in Article 207 TFEU).

c) The values and the principles have to be distinguished from the category of ‘objectives.’ The Treaty objectives can take various forms,²³ and express aims, goals and intentions of the Union, the Union’s institutions or the Member States. Having recourse to analogy, the objectives can be regarded as some sort of supranational *raison d’État* (reasons, objectives of the state). Even though this comparison might not be fully appropriate, the Treaty objectives set the main direction of the Union’s actions in a similar way to the reasons of state that also determines the fundamental objectives of a state. Moreover, the Treaty objectives played an important role to define the limits and the content of the Community competences, which was a consequence of the Community model based on a functional integration and the principle of conferral of powers. This function of the objectives was more apparent in the pre-Lisbon era, specifically in the field of the external relations, because the founding treaties did not clarify the division of competences between the European Union and Member States.²⁴ The Treaty objectives helped the Court shape the borders of the Community’s action, i.e. the objective of liberalization constantly provided the basis for justification in the Court’s argumentation, when competence conflicts had to be resolved. Therefore, the most important function of the EU Treaty objectives is to give a tool in the interpretation and in removing the gaps in the EU law.²⁵

²² The Court’s case law offers several examples, e.g. the principles related to the rule of law has been recognized even before the founding treaties made any reference to these principles (e.g. 169/80. *Administration des douanes kontra Société anonyme Gondrand Frères*, EBHT 1981 1931), or as standard example, the Court’s rulings on fundamental rights can be highlighted as well (e.g. 9/74. *Casagrande kontra Landeshauptstadt München*; 44/79. *Hauer kontra Land Rheinland-Pfalz*, 36/75. *Rutili kontra Ministre de l’intérieur*, C-159/90 *Society for the Protection of Unborn Children Ireland kontra Grogan és társai* etc.)

²³ The Article 2 of TEC (as amended by the Treaty of Nice) referred to the ‘tasks’ of the Community (“[...]The Community shall have as its task [...]”), even though the article implies provisions maintaining nature of objectives or goals. The Article 4 TEC conformed to this assumption, when made a reference back to the previous provision as “[...] purposes set out in Article 2”.

²⁴ Not only the exclusive competence character of the Common Commercial Policy was disputed, but also the material extent of the trade policy, i.e. how can the Community’s competence go beyond the international trade in goods, and involve the regulatory field of services, commercial aspects of IP rights etc.

²⁵ The functions of the Treaty objectives are systematically analysed by Reimer, distinguishing between meta-legal and legal functions. The first category encompasses the informative function and the function of integration. The components of the second category are the competence extending function, referring function, regulatory function, and the specific role suggesting that that function can be considered as a standard of the Community’s activity. Franz Reimer: *Ziele und Zuständigkeiten. Die Funktionen der Unionszielbestimmungen*. *Europarecht*, 2003/6. 992–1012.

4 Specific and horizontal principles and objectives of the CCP

Turning our attention to the EU external trade policy, the relevant constitutional categories are present in the founding Treaties in two levels. Firstly, as a specific level, the provisions regarding the CCP (Articles 206-207 TFEU) lay down the proper, trade-related principle and objective (uniformity principle and objective of liberalization). Secondly, as a general level, Article 3 (5) TEU, and the ‘umbrella provision’ of Article 21 TEU on the EU external action encompasses a range of general concepts, enshrined in ‘principles’ and ‘objectives.’ Some of them are stipulated also in another context in the founding Treaties, and it is notable, these general ‘principles’ implies the fundamental values of the European Union as well.

According to Article 207 (1) TFEU, the CCP “ [...] shall be based on uniform principles [...].” The *uniformity principle* was still part of the original EEC Treaty of 1957,²⁶ and set a requirement for the customs union and the internal market, which would have been ineffective without the adequate, uniform and coherent regulation. Accordingly, the main reason of the uniform trade rules, including the Common Custom Tariffs was to avoid any deflection of trade relations with third countries and any possible distortion in the internal market between the Member States.²⁷ However, in accordance with the Court’s well-settled case law, the uniformity principle concerns only the EU law context of the customs union, and cannot be interpreted as a requirement relating to the international trade law obligations of the EU. In other terms, it establishes the obligation on the EU to lay down the uniform regulation that is applicable for the whole customs union in the same manner, but it doesn’t give reason e.g. for the necessity of equal treatment of the Member States and third countries. The principle neither does prevent the EU from differentiating between the third countries, even though this differentiation can cause inequalities among importers, exporters or other traders operating in the single market.²⁸

Moreover, the principle has no effect on the implementation of EU’s international law obligations, i.e. the principle is inadequate to establish the incompatibility of the EU law with duties arising from multilateral or bilateral trade agreements.²⁹ The principle of uniformity also helped the Court interpret

²⁶ “After the expiry of the transitional period, the common commercial policy shall be based on uniform principles [...]” Article 113 (1) of Treaty establishing the European Economic Community (EEC Treaty of 25 March 1957).

²⁷ Case C-51/87 Commission v Council, para. 6., ECLI:EU:C:1988:455; Joined Cases 37 and 38/73 Sociaal Fonds voor de Diamantarbeiders v NV Indiamex and Feitelijke Vereniging De Belder, ECLI:EU:C:1973:165.

²⁸ See 52/81 Offene Handelsgesellschaft in Firma Werner Faust v Commission of the European Communities, para. 25. ECLI:EU:C:1982:369. The Company Faust claimed that the commercial differentiation in treatment between third countries could lead to inequalities in the internal market, which is incompatible with the EC law. The Court’s ruling refused the request arguing that “there exists in the treaty no general principle obliging the Community, in its external relations, to accord to non-member countries equal treatment in all respects.” This interpretation suggests that the different treatment accorded to traders within the Community is compatible EC law, where that different treatment is merely an automatic consequence of the different treatment accorded to non-member countries with which such traders have entered into commercial relations. See for detailed analysis: Rass Holdgaard: External Relations Law of the European Community. Wolters Kluwer, 2008. p. 76.; Steve Peers: Constitutional Principles and International Trade. European Law Review 24 (1999) p. 185-195.

²⁹ Eberhard Grabitz – Meinhard Hilf – Martin Nettesheim: Das Recht der Europäischen Union. C.H. Beck, München, 2011. (via Beck-Online). Art. 21 EUV, para. 1.

the scope of the exclusive competence character of the CCP. In this regard, the principle could play a crucial role also in the future, because the Treaty of Lisbon extended the scope of the exclusive competence to new areas, including trade in services, commercial aspects of intellectual property, foreign direct investment, and in light of the Court's recent case law, the clarification of the competence structure has not resolved the struggles between the Member States and the European Union.³⁰

The *objective of liberalization* is the second significant operational category within the specific rules on the CCP. This goal was also included into the original text of the EEC Treaty,³¹ and its extent was well shaped through the jurisprudence of the Court quite early,³² declaring, that the objective of liberalization did not establish 'unlimited' duty to remove all trade barriers in relation to other trading partners.³³ The Treaty of Lisbon has made changes on the formulation the objective, in terms of that, the EU "[...] has to contribute in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and foreign direct investment and the lowering of customs barriers and other barriers."³⁴ Comparing to the text of the Treaty of Nice, the wording of Article 206 TFEU seems to be not only technically modified, but formulated much stricter and more categorical. Pursuant to the earlier text version of the Article,³⁵ the Member States 'only' aimed to contribute to the progressive abolition of restrictions on international trade and the lowering of customs barriers. In contrast, the expression of Article 206 TFEU emphasizes in a more definitive form that the EU "shall contribute" to that end.

³⁰ See e.g. Case C-137/12 European Commission v Council of the European Union, ECLI:EU:C:2013:49; and Case C-114/12 European Commission v Council of the European Union, ECLI:EU:C:2014:2151.

³¹ Article 110 of Treaty establishing the European Economic Community (EEC Treaty of 25 March 1957): "By establishing a customs union between themselves the Member States intend to contribute, in conformity with the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international exchanges and the lowering of customs barriers. The common commercial policy shall take into account the favourable incidence which the abolition of customs duties as between Member States may have on the increase of the competitive strength of the enterprises in those States."

³² See the following leading cases on this issue: Case 5/73 Balkan-Import-Export GmbH v Hauptzollamt Berlin-Packhof, ECLI:EU:C:1973:109; Case 112/80 Firma Anton Dürbeck v Hauptzollamt Frankfurt am Main-Flughafen, ECLI:EU:C:1981:94.

³³ In other words, protective trade measures can be justified by other legitimate objectives of the Treaty, e.g. by reason of public policy etc. See Case 51/75 EMI Records Limited v CBS United Kingdom Limited, para. 16-24. ECLI:EU:C:1976:85.

³⁴ Article 206 TFEU (ex Article 131 TEC) It is noteworthy, that the preamble of the TFEU makes also emphasis of the objective of liberalization: the Member States 'desires' to "[...] contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade [...]." Preamble, Sixth recital, TFEU.

³⁵ Article 131 TEC (As amended by the Treaty of Nice): "By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers. The Common Commercial Policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States."

Minor change in terminology after the Treaty of Lisbon is that not the Member States are “contributing in the common interest to the harmonious development of world trade” but the Union itself, expressing that the CCP falls within the exclusive competence of the Union. Moreover, the new text of the article added the EU’s contribution to lowering ‘other barriers’ (not only to the customs barriers), and the text explicitly refers to the restrictions on foreign direct investment too. The both aforementioned modifications can be regarded as a reflection on the widened scope of the CCP.

In addition to these changes, it is less significant, that the reference to the “competitive strength of undertakings”³⁶ has been removed from the Treaty text. Presumably, the repeal of this part of the Article does not imply a substantial change; it has only symbolic significance. It might only signalize that the emphasis on tariff elimination among the Member States, as well as its impact on the competitiveness is already obsolete, contrary to the period of the ’50s, when the previous article was put into words, because the Member States needed stronger arguments underlying the liberalisation programme of the Community that time. Moreover, it cannot be overlooked that the ‘common interest’ remained in the text, suggesting that the liberalization pursuant to this Article is a ‘common interest’ of the Union. In other words, the Treaty provides a (self-)justification for the objective henceforward, even if the formulation is not so emphatic as it was in the previous text.

It is still a question, whether the objective of liberalization should be interpreted as only a declaration, or the objective has a stronger legal quality. According to the jurisprudence of the CJEU, the objective of the liberalization seems to be more than a mere declaration.³⁷ The objective might have a function of orientation relating the EU institutions that have to take into consideration, however they enjoy a wide margin of discretion in the implementation.³⁸ The Court provided the most comprehensive explanation of the liberalization in the Dürbeck-case,³⁹ in which an import prohibition introduced by the Community on certain agricultural products was challenged, contending by the plaintiff that the restrictive measure is incompatible with the objective of liberalization. Refusing this argument, the Court underlined that components of the objective (contribution to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers) cannot be interpreted as prohibiting the Community from enacting any measure liable to affect and restrict trade with third countries, if the measure is legally justified by the provisions of EC law.⁴⁰ It is because

³⁶ Similarly to the original Article 110 EEC Treaty, the provision in Article 131 TEC was in effect until the Treaty of Lisbon entered into force on 1st December 2009.

³⁷ Contrary to the idea of a normative character, the early literature partly regarded the provision only as a declaration, see e.g. Eberhard Grabitz (ed.): *Kommentar zum EWG-Vertrag*. München, C.H. Beck, 1989. Article 110. cikk, para. 1.

³⁸ Cf. with para. 27. of Case 5/73 *Balkan-Import-Export GmbH v Hauptzollamt Berlin-Packhof*, ECLI:EU:C:1973:109.: „[...] these measures do not contravene Article 110 either, since it has not been established, nor has there been any offer to do so, that by adopting such measures the Council overstepped the boundaries of the *wide powers of assessment* conferred on it by this provision in matters of commercial policy” (emphasis added). Accordingly, the EC reserved its freedom to determine the conditions of importation for products originating in third countries, having regard to the needs of the common commercial policy.

³⁹ Case 112/80 *Firma Anton Dürbeck v Hauptzollamt Frankfurt am Main-Flughafen*, ECLI:EU:C:1981:94.

⁴⁰ See Case 112/80 (*Dürbeck*), para. 44.

the Treaty empowered – and empowers even today – the Union to take restrictive trade measures in several forms,⁴¹ which are justified by other interests or concerns. This approach has been recognized in the Court's later case-law in the same way,⁴² and the Court has never annulled a trade measure prohibiting or restricting the importation or exportation of products, arguing that the measure might have been incompatible with the objective of liberalization.

Pursuant to Article 205 TFEU, the Union's action on the international stage – including the CCP – has to be based on principles, guided by the objectives and conducted in line with the general provisions laid down in the TEU regarding the Union's external action.⁴³ In other words, the specific principles of CCP driven free trade concerns are not isolated, and the general principles and objectives must be taken into account as well. Even though the Article 205 TFEU made reference only to the objectives and principles related to the EU external relations, it is indisputable, that the common values (Article 2 TEU as referred as principle in Article 21 TEU), and the general objectives of the Union (Article 3 (5) TEU) have to be taken into consideration in the same way. Therefore, this general level of values, principles, and objectives are composed of the following constituents:

a) Values: As the previous chapter has shown, the fundamental values of the European Union according to Article 2 TEU include the human dignity; the freedom; the democracy; the equality; the rule of law; and the human rights, including the rights of persons belonging to minorities. From the point of view of the CCP, the values have the same relevance as it was above indicated. Article 2 TEU is rather an axiological phenomenon, than a normative provision, however, the values are transformed by principles and objectives also to the external relations of the European Union (see below).

b) Principles: The proper principles of the EU external relations are enshrined in Article 21 (1) TEU that the European Union "seeks to advance in the wider world."⁴⁴ The Article highlights the below principles of the EU external relations in the following order:

- democracy;

⁴¹ E.g. anti-dumping measures, anti-subsidy measures, safeguard measures, trade measures pursuant to the Trade Barriers Regulation etc.

⁴² Case 245/81 Edeka Zentrale AG v Federal Republic of Germany, para. 24. ECLI:EU:C:1982:277. Later, the Court contrasted the objective of liberalization with the Community interest arguing, that the objective cannot compel the institutions to liberalize imports from non-member countries where to do so would be contrary to the interests of the Community, see: C-150/94 United Kingdom v Council, para. 67. ECLI:EU:C:1998:547.

⁴³ Article 205 TFEU: "The Union's action on the international scene, pursuant to this Part, shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union."

⁴⁴ Article 21 (1) TEU: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law."

- rule of law;
- universality and indivisibility of human rights and fundamental freedoms;
- human dignity;
- principles of equality and solidarity;
- respect for the principles of the United Nations Charter and international law.

These principles are based partly on the values, however, it cannot be passed over, that the emphasis, e.g. the order of the listing is not identical to the values laid down in Article 2 TEU. In addition to the different listing order, Article 21 (1) TEU don't give emphasis neither to the 'freedom', nor to the 'rights of persons belonging to minorities', however, it highlights a specific aspect of human rights ('universality and indivisibility'), and adds to that the 'fundamental freedoms', and makes mention of the 'respect for the principles of the United Nations Charter and international law,' and of 'solidarity' as well (although the solidarity is not a component of the six fundamental values, it is also included into the second sentence of Article 2 TEU).

If we accept the conclusion of the above analysis on the character of values, that the principles put the values into legal context, more precisely, in the legal context of the EU external relations, these differences can be well explicable. From this perspective, e.g. the 'freedom' is too abstract category (the degree of its abstraction is much higher, than the democracy, or human rights etc.), therefore it would have been hardly contextualized within the EU external relations. The emphasis of the universal and indivisible characteristics of human rights, or at least its universality, and the reference to the principles of the United Nations Charter and international law might be well explained in the same way, namely by the fact, the values are here incorporated into the dimension of the international relations. Finally, it is also notable, that the formulation of the paragraph implicitly covers the EU's commitment to promote these values towards third countries, as the EU "seeks to advance" these principles in the "wider world."⁴⁵ In other terms, these principles (in fact, the inherent values) establish not only a general guiding function to the Union's action, but it requires the EU to share these values with the "wider world," underpinning e.g. the human rights conditionality in trade policy *vis-à-vis* the developing countries.⁴⁶

⁴⁵ For this reason, this commitment is called 'missionary principle' in the literature, see Morten Broberg: What is the Direction for the EU's Development Cooperation After Lisbon? 16 *European Foreign Affairs Review* 2011 p. 539; Morten Broberg: Don't Mess with the Missionary Man! On the Principle of Coherence, the Missionary Principle and the European Union's Development Policy. In Paul James Cardwell (ed.): *EU External Relations Law and Policy in the Post-Lisbon Era*, Springer, 2012, pp. 181-198.

⁴⁶ See Marise Cremona: A Constitutional Basis for Effective External Action? An assessment of the Provisions on EU External Action in the Constitutional Treaty. In *EUI Working Papers* no. 2006/30 p. 30.

c) Objectives: As mentioned above, the relevant objectives of the external relations are set down in two parts of the Treaty. As a part of the general Treaty objectives, Article 3 (5) TEU are underlining a number of objectives, which the European Union “[i]n its relations with the wider world” has to “uphold and promote”, or “shall contribute” to. The relevant objectives are as follows:

- upholding and promoting values and interests of the EU;
- protection of the EU citizens;
- peace;
- security;
- the sustainable development of the Earth;
- solidarity and mutual respect among peoples;
- free and fair trade;
- eradication of poverty;
- protection of human rights, in particular the rights of the child;
- the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

The second layer of the objectives is specified in the general provisions of the Union’s external actions. According to the Article 21 (2) TEU, the EU “[...] shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations [...]” with the purpose of realizing the following objectives:

- safeguard its values, fundamental interests, security, independence, and integrity;
- consolidate and support democracy, the rule of law, human rights and the principles of international law;
- preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
- foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

- help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- assist populations, countries, and regions confronting natural or man-made disasters;
- promote an international system based on stronger multilateral cooperation and good global governance.

Even if this listing is not new – for the most part, they are rooted in previous Treaty provisions⁴⁷ –, it is significant, that these objectives are aiming to determine and influence horizontally the specific fields of external relations, including the CCP. Even a quick reading of the objectives listed in these Articles uncovers more overlapping components, not only within the objectives, but in relation to the principles as well. Due to its complexity, the deep analysis of all objectives is unrealizable within the framework of this paper,⁴⁸ however it is questionable, how these objectives does relate to the external trade policy, more specifically how it may imply the objective of liberalization of the CCP, since both Article 3 (5) and Article 21 (2) TEU refer to objectives, which can shape the content and interpretation of liberalization objective of the CCP.

Article 3 (5) TEU indicates that the EU shall contribute to ‘free and fair trade,’ which suggests that the liberalization presents only one side of the EU’s trade policy commitment. The emphasis of the ‘fair trade’ channels the trade liberalization process into the context of the development policy, assuming that the development, which occurs through improved trade opportunities relating to the developing countries, can contribute to bridge the gap between the developed and developing world. Although the concept underlying the fair trade was not addressed by the founding treaties, the issue was on the political agenda since the 1990s, after the European Parliament adopted a resolution on promoting fairness and solidarity in North-South trade, which called for initiatives to support fair trade in January 1994.⁴⁹ Later, the European Commission elaborated the framework of a voluntary based fair trade scheme,⁵⁰ and today, the fair and ethical trade is promoted by the EU as an integrated component of several policy issues.⁵¹ Although the concept of free trade is not clear, in light of the past policy achievements, the fair trade does not seem to set any limitation to the objective of liberalization.

⁴⁷ See the former Article 11 TEU Paragraph 1. (As amended by the Treaty of Nice), and specifically, Articles 131, 174, and 177 in the TEC.

⁴⁸ See detailed commentary for the principles: Grabitz, Eberhard – Hilf, Meinhard – Nettesheim, Martin (eds.): *Das Recht der Europäischen Union*. C.H. Beck, München, 2011. (via Beck-Online). Art. 21 EUV; Hermann-Josef Blanke – Stelio Mangiameli (eds.): *The Treaty on European Union (TEU). A Commentary*. Springer, 2013. pp. 831-910.

⁴⁹ A3-0373/93 European Parliament resolution on promoting fairness and solidarity in North-South trade.

⁵⁰ COM(1999) 619 final (29.11.1999) Communication from the Commission to the Council on „fair trade”

⁵¹ E.g., strategically, the Commission regards the fair trade also a component of the social corporate responsibility: „Responsible business practices by companies will be reinforced through the promotion of consumer awareness concerning sustainable consumption and production patterns and practices, and the promotion of *fair and ethical trade*.” (emphasis added). See COM(2014) 263 final (13.5.2014), Communication – A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries. p. 12.

Conversely, the basic premise of fair trade initiatives is enabling producers in developing countries to take up and benefit from the opportunities offered through more liberalized trading circumstances.⁵² As a result, it is presumable, that the reference to the fair trade in Article 3 (5) TEU intends to draw only attention to the social and development dimension of the trade policy. It can be noted that the developing countries are referred in the general objectives in another context too. As the EU “foster the sustainable economic, social and environmental development of developing countries with the primary aim of eradicating poverty,” reflects not only to the social, but to the economic and environmental dimensions as well.

Besides, the objective of Article 21 (2) TEU to “encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade” can be regarded a partly repetition of the specific liberalization objective of the Article 206 TFEU. In other words, the TEU devotes a horizontal constitutional character of the objective of liberalization, i.e. the progressive abolition of restrictions on international trade, having the consequence, that this trade related objective became determining factor for all external policy fields of the Union after the Treaty of Lisbon. In context of the last objective of Article 21 (2) TEU (promoting “an international system based on stronger multilateral cooperation”), the previous objective can be read as a commitment to cooperation within the multilateral framework, i.e. on the basis of the World Trade Organization. In other words, the objective gives incentives to strive for further development and strengthening of the WTO and a better inclusion of third countries in the WTO system. However, as an alternative strategy, the option of conclusion of regional and bilateral free trade agreements, which corresponds to the most recent tendency of the EU trade policy, is not excluded, because also the regional integration might help to integrate other countries into the world economy and contribute to the progressive abolition of restrictions on international trade.⁵³

5 Coherence and conflicts of the objectives and principles

The question is still to be answered, how the principles and objectives of general and specific levels are relating to each other. Earlier, the possible conflict between the trade-related objectives and general objectives could be resolved by the specificity of the trade policy, i.e. the goals of the CCP, as *lex specialis*, was deemed to prevail over the general objectives of the Community.⁵⁴ Later, the Single

⁵² Cf. COM(1999) 619 final, p. 13.

⁵³ Hermann-Josef Blanke – Stelio Mangiameli (eds.): *The Treaty on European Union (TEU). A Commentary*. Springer, 2013. pp. 861-862. The authors are emphasising also a ‘side costs’ of this tendency, that even though the regional and bilateral free trade agreements contribute to the lowering of trade restrictions in the relationship between the partners of the FTAs, but might create new restrictions in relation to third states, and could erode the non-discriminatory trade regime of the WTO.

⁵⁴ In context with the pre-Lisbon structure of founding treaties, Basedow made reference to the principle of *lex specialis derogat legi generali*: Jürgen Basedow: Zielkonflikte und Zielhierarchien im Vertrag über die Europäische Gemeinschaft. In: Ole Due – Marcus Lutter – Jürgen Schwarze (eds.): *Festschrift für Ulrich Everling*. Baden-Baden, Nomos, 1995. p. 51. Contrary to this view, the TEU commentary of Blanke – Stelio Mangiameli highlights the equal status of the Treaties after Lisbon pursuant to Article 1 TEU, consequently, neither the rule of *lex superior derogat*

European Act introduced a requirement for coherence and consistency within the external Community policies, stipulating that “the external policies of the EC and the policies agreed in European Political Cooperation must be consistent.” Moreover it has referred also to the institutional aspect of consistency, as stated that “the Presidency and the Commission, each within its own sphere of competence, shall have special responsibility for ensuring that such consistency is sought and maintained.”⁵⁵

The Treaty of Lisbon applied the same method and added the consistency requirement to the unified structure of external objectives and principles, ensuring the consistency of general and specific, trade-related principles and objectives. The consistency requirement is reinforced by institutional cooperation as well, obliging the key players of external action: the Council and the Commission, assisted by the High Representative for Foreign Affairs and Security Policy, who have to cooperate in order to ensure this consistency.⁵⁶ The consistency requirement is still handled more clearly on the level of the CCP (and other external policies laid down in the TFEU), because the provisions of Article 21 TEU on consistency is repeated in Article 205 TFEU.⁵⁷ In addition, the reference to the principles and objectives of Union’s external action is stressed – unnecessarily again – in Article 207 TFEU.⁵⁸

According to the grammatical and systematic interpretation of these provisions it is plausible that the inherent principles and objectives of CCP governed by free trade ideas are not strictly subordinate to the general principles of external relations, but the EU trade policy should be ‘guided’ by the principles and objectives of general level. In other terms, the EU, at least, has to take into account these concepts, which encompasses a sort of non-economic and non-trade factors.⁵⁹

However, if several principles and objectives are incorporated in a systematic order, the question concerning the potential conflicts between the different areas, principles and objectives might always arise. This issue is specifically relevant now, because, as the previous chapter indicated, the Treaty of Lisbon has inserted several principles and objectives which could be hardly reconciled with the logic of the trade policy and principally with the objective of liberalization. Therefore, conflict or tensions can be

legi inferiori nor the rule of *lex posterior derogat legi priori* may apply. See Hermann-Josef Blanke – Stelio Mangiameli (eds.): *The Treaty on European Union (TEU). A Commentary*. Springer, 2013. p. 87.

⁵⁵ Single European Act (OJ L 169, 29. 6.1987), Article 30 (5). Similarly, the preamble of the SEA gave emphasis to the consistency: “Aware of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence [...]” Single European Act, preamble, fifth recital.

⁵⁶ Article 21 (3) TEU: “[...] The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.”

⁵⁷ Cf. with Article 205 TFEU.

⁵⁸ Article 207 TFEU paragraph 2: „The Common Commercial Policy shall be conducted in the context of the principles and objectives of the Union’s external action.”

⁵⁹ Tietje regards that as ‘politisisation’ of the CCP and makes some critics on that, see Tietje, Christian: *Die Außenwirtschaftsverfassung der EU nach dem Vertrag von Lissabon. Beiträge zum Internationalen Wirtschaftsrecht*. Heft 83. January 2009. p. 20.

expected in the relation of trade and non-trade concerns, e.g. in issues of trade and human rights, trade and environment, trade and labor rights and social policy concerns, etc. It is notable, from this perspective, that these topics have significance not only at the level of the European Union, but also in the field of international trade law, namely within the World Trade Organization. The core argument of the debate behind these potential tensions focuses on the indisputable fact that the abolition of trade barriers may not have only beneficial impacts. However, the harmful implications caused by the liberalization most often come up not in the field of trade but areas of other social dimensions can be negatively affected.

Since the EU has been always a dominant promoter of the inclusion of social policy concerns into the external trade policy, the aforementioned conflict potential is less concentrated at the level of the European Union's decisions making mechanism,⁶⁰ than relating to international dimension, i.e. in trade negotiations, or in implementation of the international economic law. This tendency and the potential conflicts are palpable in the EU new generation of free trade agreements (FTAs). After adopting the Global Europe Strategy in 2006,⁶¹ the European Commission is intending to conclude agreements with emerging markets, which go already beyond the 'classic' free trade agreements, including also rule of law and human rights clauses, environmental objectives, and sustainable development. In a similar way, some EU autonomous trade preference schemes involve the labor rights, environmental consideration, and promotion of fair trade specifically.⁶² It is worth noting, however, that these inclusive approach of the EU is not only a part of the policy agenda towards the developing countries. Even the recent trade and investment partnership agreements aim at integrating several non-trade concerns into the body of the agreements.

Even though the WTO has becoming more open to the non-trade concerns in the last two decades, in light of the current legal framework of the WTO, all trade measures, which are underpinned by the social policy considerations, as the human rights, environmental protection, cultural aspects, or other social policy objectives, can be regarded as undesirable, potential trade restrictions, conflicting with the WTO's main concern on free trade and liberalization. Therefore, the main question is how these restrictive measures can comply with the WTO law (e.g. with the exceptions of the Article XX GATT,

⁶⁰ However, conflicts are neither at the Union's level conceptually excluded, e.g. institutional conflicts can be presumed, as the European Parliament has made clear that the Union has to involve non-economic, socio-political approaches closely in its external action for a long time. From this perspective, it seems to be significant, that the Treaty of Lisbon has considerably strengthened the position of the European Parliament in the field of the Common Commercial Policy (see e.g. the consent requirement of the European Parliament for the conclusion of international agreements in Article 207 (2) TFEU).

⁶¹ The strategy emphasised, that the new free trade agreements concluded by the EU, should include "new co-operative provisions relating to labour standards and environmental protection." These combined clauses are standard component in the FTAs today. See Global Europe – Competing in the world. A contribution to the EUs Growth and Job Strategy, COM (2006) 567., p. 12.

⁶² However, these preferential agreements can be seen as not fully compatible with the WTO law, see e.g. European Communities – Conditions For The Granting Of Tariff Preferences To Developing Countries, WT/DS246/AB/R (7 April 2004). http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds246_e.htm

Article XIV GATS etc.), and how these conflicts can be resolved at the level of the World Trade Organization.

6 Conclusion

The Common Commercial Policy is guided by a two-level structure of operational concepts, composing of values, principles and objectives set out in Articles 2, 3 and 21 TEU, moreover the principle of uniformity and the objective of liberalization laid down in Article 207 TFEU. It was argued, that the values possess axiological and ethical quality, and express the fundamental societal expectations and requirements of a 'community of values.' However, the values are also incorporated into principles, which have normative character. Despite of the normative nature, the formulation of the principles – including also the principle of uniformity – seems to be relatively abstract and restrictive, therefore the principles do not establish strict obligations within the Common Commercial Policy. Due to the soft formulations in the Treaty – “shall be guided”, “promote” etc. – it can be concluded, that the principles are not able to give obvious signal of what concrete trade policy decision the EU institutions should adopt. The Treaty objectives were seen more than mere declaration, but according to the Treaty formulations, and in light of the Court’s interpretation, the objectives are expressing only an orientation, or direction of the Union’s action. Consequently, both the principles and the objectives in this context have legal quality, but might imply only an orientational, guiding function in the decision-making procedures. However the EU institutions may overlook neither the principles, nor the objectives. The institution has to take into account these concepts; however, it enjoys a wide margin of discretion. As also indicated above, due to the heterogeneity of values, principles, possible conflicts can arise, which are addressed by the coherence requirements of the Treaty. The EU may face also conflicts with its trading partners in multilateral level, however, this can be regarded rather a chance, which provided the opportunity for the European Union to shape the debate on the non-trade issues and the ‘values-driven’ trade policy.

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